

CONTRACT FOR CONSTRUCTION WORK < \$25,000

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **A.L.M. Consulting, LLC** (**CONTRACTOR**) enter into this Contract (**09-013-YSD**) for services. The party's names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Youth Services Division
1539 11th Avenue
PO Box 201301
Helena, Montana 59620 -1301
(406) 444-3930

A.L.M. Consulting, LLC

1316 8th Avenue
Helena, MT 59601
(406) 461-4037

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. DUTIES/RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR agrees to provide the following goods and/or services:

- A. Asbestos consulting services, as per quote dated August 5, 2008 (Attached), consisting of:
 - 1. Asbestos abatement design and project permitting.
 - a. Initial testing for asbestos. This testing will be documented with pictures,
 - b. Notify the State of Montana – Asbestos Control Program and secure asbestos abatement project permit.
 - 2. Project oversight and air monitoring services.
 - a. Base line pre-abatement air sampling: collected and analyzed,
 - b. Pre-abatement visual inspection,
 - c. Adjacent area air sampling to ensure OSHA permissible exposure limit,
 - d. Final clearance Visual Inspection,
 - e. Final clearance air sampling and analysis to ensure federal regulations compliance.
 - 3. Final reporting and project close-out.
 - a. Final report documenting air quality and satisfactory site conditions.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of the services (or goods) provided pursuant to Section 2 in the following manner:

- A. DEPARTMENT shall pay CONTRACTOR an amount not to exceed **six thousand one hundred thirty seven and 50/100 dollars (\$6,137.50)** for the goods and/or services described in Section 2 above.
- B. DEPARTMENT agrees to pay CONTRACTOR within 30 business days following receipt of a correct invoice.

- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its' own equipment in providing the goods/services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and phone service (e.g., Montana State Prison does not allow cellular or digital phones within the facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final signature and shall terminate on June 30, 2009, unless terminated earlier in accordance with the terms of this Contract.

6. LIAISON AND NOTICE

- A. Cindy McKenzie, Superintendent 2 Riverside Road, Helena, MT 59602, (406) 225-4501 or successor serves as DEPARTMENT'S liaison.
- B. Ryan D. McGee, Owner, 1316 8th Ave., Helena, MT 59601, (406) 461-4037 or successor serves as CONTRACTOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. **HOLD HARMLESS AND INDEMNIFICATION**

- A. CONTRACTOR agrees that he is financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.
- B. CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

10. **INSURANCE**

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverage's must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverage's, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, property damage, premises, operations, independent contractor's protective, products and completed operations, and broad form property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

- i. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insured's; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

- C. **Specific Requirements for Automobile Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insured's for automobiles leased, hired, or borrowed by CONTRACTOR.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, sub-contract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligations of this Contract and any transferee or sub-contractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must comply with all applicable federal and state law including, but not limited to the

prevailing wage laws, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may terminate this CONTRACT if available funding is reduced.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. FREEDOM FROM DISCRIMINATION

All parties of this Contract agree that all hiring must be done on the basis of merit and qualifications. There may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person or persons performing the Contract. However, construction work within an Indian reservation requires that a hiring preference be given to Indian residents of said reservation who have substantially equal qualifications. This preference will apply unless federal law specifically prohibits residency preference.

19. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates covered under this Contract.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

21. SEVERABILITY

If any single part, or parts, of this Contract are determined void, the remaining parts remain valid and operative.

22. PERMITS/NOTICES/FEEES

CONTRACTOR shall secure and pay for all permits and inspections; give all notices; pay all taxes and fees; and comply with all laws, ordinances, rules, regulations, and lawful orders bearing on the performance of the work.

23. LABOR/MATERIALS/EQUIPMENT

Unless otherwise specified, CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction, and services necessary for the proper execution and completion of the work. All material provided shall be new and in good condition. All workmanship shall be of good quality and in accordance with acceptable standards of the respective trades.

24. CONTRACTOR REGISTRATION

Construction contracts greater than \$2,500.00 require Contractors to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA **prior** to Contract execution. A copy of the registration certificate must be provided to DEPARTMENT. **CONTRACTOR'S registration number is #156448 - expiration date of 09/09/2009.**

25. GROSS RECEIPTS TAX

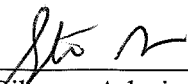
In compliance with 15-50-206 MCA, DEPARTMENT will withhold 1% of all payments due CONTRACTOR for Contracts over \$5,000. CONTRACTOR is also required to withhold 1% of all payments due to its sub-contractors who perform work greater than \$5,000 under this Contract. CONTRACTOR shall utilize the required forms and notify the Department of Revenue of the amount withheld.

26. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, Montana 59620-1301.

SIGNATURE

DEPARTMENT



Steve Gibson, Administrator
Youth Services Division

9-2-08
Date

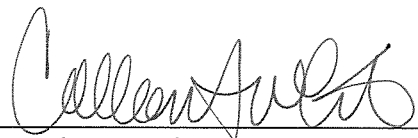
CONTRACTOR



Ryan D. McGee
A.L.M. Consulting, LLC

8-22-08
Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

8/29/08
Date

**A.L.M. CONSULTING, LLC**

August 5, 2008

Cindy McKenzie, Superintendent
State of Montana Department of Corrections
Riverside Youth Correctional Facility
P.O. Box 88
Boulder, Montana 59632

**RE: Proposal to Provide Asbestos Consulting Services
Riverside Youth Correctional Facility – Kitchen Upgrade & Remodel, Building #15**

Dear Ms. McKenzie,

A.L.M. Consulting, LLC (A.L.M.) is pleased to provide the State of Montana Department of Corrections – Riverside Youth Correctional Facility (RYCF) with this proposal to provide asbestos consulting services for the above referenced project. Asbestos consulting services, for purposes of this proposal, will include three tasks, which include: 1) Asbestos Abatement Design and Project Permitting, 2) Project Oversight and Air Monitoring Services, and 3) Final Reporting and Project Close-out.

To complete this project, A.L.M. will utilize information obtained during our July 24, 2008, inspection of Building #15, which confirmed the presence of asbestos within the thermal system insulation (TSI) on the mechanical piping system within the crawlspace and sheet flooring materials under 12" x 12" vinyl floor tile within the Kitchen. Each task for this project is explained in greater detail below.

SCOPE OF SERVICES

Task 1 – Asbestos Abatement Design and Project Permitting

A.L.M. personnel will work together with RYCF personnel and the abatement contractor, selected to perform the work, during the design phase to insure all asbestos-containing materials within the work areas are identified and scheduled for abatement. The preparation of the asbestos abatement design documents will be completed utilizing existing building sketches provided by RYCF. We will also provide photographs of the scheduled abatement work areas for use during the project.

Additional services to be completed under this task will include notifying the State of Montana – Asbestos Control Program (ACP) of the project and securing an asbestos abatement project permit, utilizing the project design documents and photographs. The asbestos abatement permit application will be completed by A.L.M. and the abatement contractor in accordance with the Environmental Protection Agency (EPA) National Emission Standard for Hazardous Air Pollutants (NESHAP) regulation 40 CFR 61.

Once the application for the project is provided to the ACP, a 10-day waiting period will be required, which allows the ACP an opportunity to review the design documents and schedule a site visit to the project prior to their approval of the permit.

Ms. Cindy McKenzie, Superintendent
Riverside Youth Correctional Facility
August 5, 2008
Page 2 of 3

Task 2 – Project Oversight and Air Monitoring Services

Project oversight and air monitoring services will be completed on a part-time basis over the course of the project. A.L.M. personnel will remain in close contact with the selected asbestos abatement contractor and will provide correspondence between the contractor and RYCF personnel to keep them apprised of the projects status. A.L.M.'s on-site personnel will perform the following tasks throughout the duration of the abatement project.

Pre-Abatement Air Sampling – Up to three pre-abatement work area air samples will be collected and analyzed for each designated work area where abatement operations are scheduled to be completed. The samples will serve as a baseline to determine existing conditions within the work areas prior to commencing with the abatement project. A total of six air samples will be collected, which will include three each from the crawlspace and the Kitchen.

Pre-Abatement Visual Inspection – A.L.M. personnel will remain in contact with the abatement contractor during the preparation of the work areas, which will allow A.L.M. personnel to conduct pre-abatement visual inspections of the work areas. The abatement contractor will not proceed with abatement activities until the work areas have been visually inspected by A.L.M. personnel.

Adjacent Area Air Sampling – Periodic air monitoring will be completed in adjacent occupied and unoccupied areas near the abatement work area to ensure the adjacent work areas are below the Occupational Safety and Health Administration (OSHA) permissible exposure limit. Adjacent area air monitoring will be conducted on an as needed basis, generally during initial abatement and during waste load-out operations.

Final Clearance Visual Inspection – Final clearance visual inspections will be conducted for each abatement work area. Each work area will be inspected for general cleanliness and visible evidence of any remaining asbestos dusts or residues following detail cleanup by the abatement contractor. Final clearance air sampling will not be completed until the containment is deemed clean by A.L.M. personnel.

Final Clearance Air Sampling and Analysis – A.L.M. personnel will provide final clearance air sampling in accordance with the Asbestos Hazards and Emergency Response Act (AHERA) regulation 40 CFR 763. The air sampling event will require sample collection of seven air samples per containment. Final clearance air sample analysis of the crawlspace will be completed by A.L.M. personnel utilizing Phase Contrast Microscopy (PCM) techniques. If final clearance air sampling is warranted within the Kitchen work areas, air sample analysis will require the use of Transmission Electron Microscopy (TEM).

PCM analysis will be completed on-site with same day turn-around. TEM analysis will require samples to be shipped under chain-of-custody protocol to EMSL Analytical, Inc. in Westmont, New Jersey for a 24-hour turn-around.

Task 3 – Final Reporting and Project Close-out

A.L.M. personnel will prepare a final report documenting all project activities for project close-out, which will include verification of substantial and final completion of the abatement project. Final completion will be based on air quality and release criteria, satisfactory site conditions for releasing the work area to the general contractor, and review of the abatement contractors final invoice for the project. The completion status will be reported to you as the basis for handling the contractor's progress and final request for payments, including adjustments.

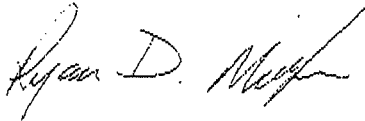
Ms. Cindy McKenzie, Superintendent
Riverside Youth Correctional Facility
August 5, 2008
Page 3 of 3

ACCEPTANCE

A.L.M. proposes to complete the asbestos consulting services as described herein on a time and materials basis for an estimated fee of \$6,137.50. A copy of our project cost estimate is provided as Attachment A, for review. Should you find this proposal acceptable, please sign and date this document in the spaces provided below, which will act as our written authorization to proceed with scheduling this project.

We appreciate this opportunity to provide the State of Montana – Riverside Youth Correctional Facility with this proposal, and we look forward to working with you on this project. If you have questions or need further clarification on our proposed scope of services, please contact me in our Helena, Montana office at (406) 461-4037 or via e-mail at rmcgee@bresnan.net.

Respectfully Submitted,



Ryan D. McGee
Owner/Project Manager

Attachment A – Project Cost Estimate

August 5, 2008

**ATTACHMENT A
PROPOSED COST ESTIMATE**

**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
RIVERSIDE YOUTH CORRECTIONAL FACILITY**

BOULDER, MONTANA

Task 1 - Asbestos Assessment Design and Project Permitting

	Unit	Rate	Quantity	Estimated Cost
Labor				
Senior Project Manager	per hour	\$70.00	0.0	\$0.00
Project Designer	per hour	\$65.00	24.0	\$1,560.00
Asbestos Inspector/Technician	per hour	\$60.00	4.0	\$240.00
Labor Cost - Task 1				\$1,800.00
Reimbursables				
Asbestos Laboratory Analytical - PLM	each	\$15.00	17.0	\$255.00
Travel Time	per hour	\$65.00	4.0	\$260.00
Project Vehicle	per mile	\$0.60	200.0	\$120.00
Lodging	per day	\$75.00	0.0	\$0.00
Copies - Standard	each	\$0.25	50.0	\$12.50
Shipping - FedEx	each	\$50.00	1.0	\$50.00
Reimbursable Cost Task 1				\$697.50
Total Cost - Task 1				\$2,497.50

Task 2 - Project Overview and Permitting Summary

	Unit	Rate	Quantity	Estimated Cost
Labor				
Senior Project Manager	per hour	\$70.00	0.0	\$0.00
Project Designer	per hour	\$65.00	0.0	\$0.00
Asbestos Inspector/Technician	per hour	\$60.00	40.0	\$2,400.00
Labor Cost - Task 2				\$2,400.00
Reimbursables				
Asbestos Laboratory Analytical - PLM	each	\$15.00	0.0	\$0.00
Travel Time	per hour	\$60.00	4.0	\$240.00
Project Vehicle	per mile	\$0.60	200.0	\$120.00
Lodging	per day	\$75.00	0.0	\$0.00
Copies - Standard	each	\$0.25	100.0	\$25.00
Shipping - FedEx	each	\$50.00	0.0	\$0.00
Reimbursable Cost - Task 2				\$385.00
Total Cost - Task 2				\$2,785.00

August 5, 2008

**ATTACHMENT A
PROPOSED COST ESTIMATE**

**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
RIVERSIDE YOUTH CORRECTIONAL FACILITY**

BOULDER, MONTANA

Task 3 - Final Reporting and Project Close-out

	Unit	Rate	Quantity	Estimated Cost
Labor				
Senior Project Manager	per hour	\$70.00	4.0	\$280.00
Project Designer	per hour	\$65.00	0.0	\$0.00
Asbestos Inspector/Technician	per hour	\$60.00	8.0	\$480.00
Clerical	per hour	\$35.00	2.0	\$70.00
Labor Cost - Task 3				\$830.00
Reimbursables				
Asbestos Laboratory Analytical - PLM	each	\$15.00	0.0	\$0.00
Travel Time	per hour	\$60.00	0.0	\$0.00
Project Vehicle	per mile	\$0.60	0.0	\$0.00
Lodging	per day	\$75.00	0.0	\$0.00
Copies - Standard	each	\$0.25	100.0	\$25.00
Shipping - FedEx	each	\$50.00	0.0	\$0.00
Reimbursable Cost - Task 3				\$25.00
Total Cost - Task 3				\$855.00

Grand Total Project Cost